

THE COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATION AND ENERGY
D.T.E. 02-33
PETITION OF
NEW ENGLAND POWER COMPANY
FOR APPROVAL OF ASSET DIVESTITURE

DIRECT TESTIMONY OF
TERRY L. SCHWENNESEN
ON BEHALF OF
NEW ENGLAND POWER COMPANY

MAY 17, 2002

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2 **DIRECT TESTIMONY OF TERRY L. SCHWENNESEN**
3 **ON BEHALF OF**
4 **NEW ENGLAND POWER COMPANY**
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7 **I. INTRODUCTION AND QUALIFICATIONS**

8 **Q. Please state your full name and business address.**

9 A. Terry L. Schwennesen. My business address is 25 Research Drive, Westborough,
10 Massachusetts 01582.

11 **Q. Please state your position.**

12 A. As of May 1, 2002, I assumed the position of General Counsel for The Narragansett
13 Electric Company (“Narragansett”) and Vice President for New England Power
14 Company (“NEP”). Prior to May 1, I was Vice President and Director of Generation
15 Investments for NEP. In my capacity with NEP, I am responsible for the divestiture of
16 NEP’s remaining minority interests in two operating nuclear generating plants and one
17 fossil unit, including NEP’s 9.95766% ownership share of the Seabrook Nuclear Station
18 (“Seabrook”). I have also been responsible for the safe decommissioning of NEP’s
19 minority interests in three retired nuclear generating plants and NEP’s remaining
20 wholesale power supply obligations.

21 **Q. Please describe your educational background and training.**

22 A. I hold a Bachelor of Arts degree, with honors, in Business Administration from Adrian
23 College of Adrian, Michigan. In addition, I hold a Juris Doctor degree, with honors,
24 from Suffolk University Law School of Boston, Massachusetts.

25 **Q. What is your professional background?**

1 A. Prior to being appointed as Vice President of Generation Investments on June 1, 2000, I
2 was Assistant General Counsel for Massachusetts Electric Company and Senior Counsel
3 for the National Grid USA Service Company, Inc. While in the Legal Department, I was
4 primarily responsible for regulatory matters affecting Massachusetts Electric Company.
5 Prior to joining the Legal Department, I held a variety of positions in the Rate
6 Department of the New England Electric System (“NEES”) companies, most recently
7 culminating in the position of Director of Rates. As Director of Rates, I had
8 responsibility over all rate matters affecting the NEES companies before the Federal
9 Energy Regulatory Commission (“FERC”), the New Hampshire Public Utilities
10 Commission, the Rhode Island Public Utilities Commission and the Massachusetts
11 Department of Telecommunications and Energy, formerly known as the Department of
12 Public Utilities (“Department”). Prior to joining the NEES companies in 1985, I was
13 employed as a rate analyst in the Rate department of Consumers Power Company, which
14 is headquartered in Jackson, Michigan.

15 **Q. Have you previously testified before the Department?**

16 A. Yes. I have testified before the Department as well as before FERC, the Rhode Island
17 Public Utilities Commission and the New Hampshire Public Utilities Commission.

18 **Q. What is the purpose of your testimony in this proceeding?**

19 A. I am providing this testimony in support of NEP’s Petition for Approval of Asset
20 Divestiture. Under the terms of the Restructuring Act and Restructuring Settlement
21 approved by the Department, NEP agreed that it would endeavor to sell its share of

1 Seabrook and all other nuclear units in which NEP has a minority interest on terms that
2 will assign ongoing operating costs and responsibility to a nonaffiliated third party. The
3 proposed sale of Seabrook is NEP's final step to achieving that goal since the sale of
4 NEP's only other remaining nuclear interest, Vermont Yankee, is expected to close in
5 July, 2002. My testimony also describes the benefits to customers of entering into this
6 sale transaction. Additionally, my testimony supports the associated request for findings
7 that the divested Seabrook assets are "eligible facilities" under Section 32(c) of the Public
8 Utility Holding Company Act of 1935 ("PUHCA") which findings are essential to the
9 designation of the buyer as an exempt wholesale generator ("EWG"). Both the sale
10 process for Seabrook and terms under which NEP and the other selling owners will be
11 transferring their ownership interests are more fully described in the Petition and the
12 Testimony of Mr. Paul Dabbar.

14 **II. STATUTORY AND REGULATORY STANDARDS**

15 **Q. Please describe the legislative and regulatory framework under which NEP is**
16 **divesting its minority interest in Seabrook.**

17 A. The 'Petition for Approval of Asset Divestiture' submitted today in this proceeding sets
18 forth the governing authority as set forth in the law and Department decisions. In sum,
19 the Department has general supervisory authority of all gas and electric companies under
20 Section 76 of Chapter 164 of the General Laws. This authority was augmented by the
21 Restructuring Act (St. 1997, c. 164). The Restructuring Act requires that each electric
22 company organized under the provisions of Chapter 164 file a plan for restructuring its

1 operations to allow for the introduction of retail competition in generation supply, in
2 accordance with the provisions of G.L. c. 164, Section 1A. In reviewing a company's
3 proposal to divest its generating units, the Department considers the consistency of the
4 proposed transactions with the company's restructuring plan or settlement, and the
5 Restructuring Act. A divestiture transaction will be determined to be consistent with a
6 company's restructuring plan or settlement and the Restructuring Act if the company
7 demonstrates to the Department that the "sale process is equitable and maximizes the
8 value of the existing generation facilities being sold." *See, e.g., Boston Edison Company*
9 *and Commonwealth Electric Company*, D.T.E. 98-119/D.T.E. 98-126, p. 5 (March 22,
10 1999).

11 On July 14, 1997, the Department approved the Restructuring Settlement Agreement (the
12 "Restructuring Settlement"), including the provisions of a wholesale rate stipulation and
13 agreement (the "Wholesale Settlement") submitted by Massachusetts Electric Company
14 and Nantucket Electric Company. *Massachusetts Electric Company and Nantucket*
15 *Electric Company*, D.P.U./D.T.E. 96-25-A (1997). On November 25, 1997, the FERC
16 approved, subject to a compliance filing, the Wholesale Settlement. *See New England*
17 *Power Company*, Docket No. ER97-678-000. On December 23, 1997, the Department
18 found that the Restructuring Settlement approved by the Department on July 14, 1997,
19 substantially complied with or was consistent with the Restructuring Act. *Massachusetts*
20 *Electric Company and Nantucket Electric Company*, D.T.E. 96-25-B (1997).

1 In D.T.E. 96-25-B, the Department found that the Restructuring Settlement was
2 consistent with the Restructuring Act's two key features: to implement a restructured
3 electric generation market, including retail access by March 1, 1998, and to provide
4 prescribed rate reductions. *Id.* at 12. The Department stated, "[b]ecause NEP's non-
5 nuclear generating facilities will be sold to an unaffiliated third party after a competitive
6 auction or sale, and the proceeds from the sale will be applied to reduce the amount of the
7 Companies' transition costs, the [Restructuring] Settlement is consistent with the
8 divestiture requirements of the Act, and mitigation of such transition costs." *Id.*

9 **Q. What does the Restructuring Settlement specifically say regarding NEP's**
10 **divestiture of its interests in nuclear facilities?**

11 **A.** Section V.D.2. of NEP's Restructuring Settlement states:

12 As part of the divestiture, NEP will endeavor to sell, lease, assign, or
13 otherwise dispose of its minority shares of nuclear units or entitlements on
14 terms that will assign ongoing operating costs and responsibility to a
15 nonaffiliated third party but may require NEP to retain the obligation for
16 post-shutdown, decommissioning and site restoration for these units or
17 entitlements. NEP shall recover these post-shutdown, decommissioning,
18 and site restoration costs from Mass. Electric through the Contract
19 Termination Charge or the Residual Value Credit, and shall credit any net
20 positive value or recover any payments associated with such transaction in
21 the reconciliation account of the Contract Termination Charge or the
22 Residual Value Credit.

23 Section 6.1.2 of the Wholesale Settlement contains identical language.

24 **Q. Does NEP's sale of its minority interest in Seabrook comply with the Restructuring**
25 **Settlement?**

26

1 A. Yes. By participating in the Seabrook auction process, the sale of NEP's minority
2 interest in Seabrook fully complies with the Restructuring Settlement language to "endeavor to
3 sell, lease, assign or otherwise dispose of its minority shares of nuclear units ... on terms that
4 will assign ongoing operating costs and responsibility to a nonaffiliated third party."

5
6 **III. AUCTION PROCESS AND RESULTS**

7 **Q. Please describe the auction process.**

8 A. Seabrook was offered in a public auction conducted pursuant to New Hampshire RSA
9 369-B:3, IV(b)(13) and Connecticut General Statutes § 16-244g. The New Hampshire
10 Public Utilities Commission ("NHPUC") and Connecticut Department of Public Utility
11 Control ("CT DPUC") selected J.P. Morgan Securities Inc. ("JPMorgan") a nationally
12 prominent investment banking firm, to conduct the auction under the supervision of
13 NHPUC's Staff and the CT DPUC's Utility Operations and Management Analysis
14 ("UOMA") auction team. The sale process ensured complete, uninhibited and non-
15 discriminatory access to all data and information and was equitable and maximized the
16 value of the assets being sold. Paul M. Dabbar, of JPMorgan, explains in detail the
17 auction process in his pre-filed direct testimony.

18 **Q. Who chose the winning bidder?**

19 A. JPMorgan, the NHPUC Staff and UOMA determined the winning bidder.

20 **Q. In your opinion does the sale of the Seabrook assets comply fully with all statutory
21 and/or regulatory requirements pertinent to the sale of these assets?**

22 A. Yes.

1 **Q. Please describe the outcome of the auction process.**

2 A. The buyer, FPL Energy Seabrook, LLC (“FPLE Seabrook”) and sellers entered into a
3 Purchase and Sale Agreement (“PSA”) on April 13, 2002. The closing of the sale is
4 subject to receiving all necessary regulatory approvals, among other things.

5 **Q. What exactly is being sold?**

6 A. The PSA sets forth the terms of the transaction and provides for the sale of NEP’s
7 minority interest to FPLE Seabrook as part of the 88.23% proposed to be sold as part of
8 this transaction. In addition, nuclear fuel inventory, non-fuel inventory, Seabrook Unit 2
9 and components, and Lot 2 real property owned by NAEC will also be sold. The
10 Massachusetts Municipal Wholesale Electric Company (“MMWEC”), the Taunton
11 Municipal Lighting Plant and the Hudson Light and Power Department (the “Non-Selling
12 Owners”) have chosen not to sell their ownership shares in Seabrook, which are 11.59
13 percent, .10 percent and .077 percent, respectively.

14 **Q. Is there a Purchased Power Agreement (“PPA”) as part of this sale?**

15 A. No.

16 **Q. Where are the terms of the sale contained?**

17 A. The PSA is the principal document setting forth the terms under which NEP and the other
18 co-owners will sell the assets to FPLE Seabrook. The PSA is appended to the Petition as
19 Exhibit 3. Mr. Dabbar’s prefiled testimony, attached to the Petition as Exhibit 2, contains
20 a summary of the PSA. Additionally, certain other agreements (the “Related
21 Agreements”) identified as exhibits in the PSA, including an Interconnection Agreement
22 required to satisfy NRC criteria for off-site power for the new buyer, which set forth the

1 provisions of the ongoing relationships of the seller(s) and buyer, are being filed with the
2 PSA.

3 **Q. Does the PSA address the potential for excess contributions to the decommissioning**
4 **fund after decommissioning of Seabrook has been completed?**

5 A Yes. The PSA contains a provision (Section 5.10(h)(ii)) that states that if such excess is
6 determined to represent Massachusetts customer contributions, this excess would be
7 returned to Massachusetts customers to the extent required by any applicable Law, as
8 defined under the PSA .

9 **Q. Are other regulatory approvals required prior to closing this sale?**

10 **A.** Yes. The sale is contingent upon the approval of a number of regulatory agencies both at
11 the federal and state level. As part of the sale process, to ensure that the buyer will
12 comply with all applicable federal rules and regulations, the sellers have submitted an
13 application to transfer the NRC operating licenses for Seabrook. The parties will also
14 submit all necessary applications to federal and state regulatory bodies. Once the sale is
15 approved by the Department, and subject to the receipt of all other required regulatory
16 approvals, the parties plan to close the sale in late November 2002. As discussed in Mr.
17 Dabbar's testimony, while it is the stated desire of all parties to conduct a single closing,
18 the PSA provides that multiple closings may also occur. NEP's goal is to participate in
19 the initial closing as a means to mitigate potential closing risks. Accordingly, NEP is
20 seeking expedited approval to ensure that it is able to close on a timely basis.

1 **Q. Would you term the sale a success?**

2 A. Yes. The sale was a success because it was fair and open and maximized the value of the
3 divested assets. The fact that: (1) the sale price is one of the highest amounts received in
4 a nuclear auction; (2) there is no power purchase agreement; (3) the winning bidder has a
5 history of successful nuclear plant operations, and is highly regarded throughout the
6 industry and by the NRC; and (4) future uncertainty regarding costs and liabilities
7 associated with operation and decommissioning will no longer be borne by NEP and
8 NEP's customers, are irrefutable proofs of this success.

9 **Q. Are there any other issues that the Department should be aware of regarding the**
10 **proposed sale of NEP's minority ownership interest to FPLE Seabrook?**

11 A. Yes. The sale of NEP's ownership interest is subject to a "Right of First Refusal"
12 provision in the Seabrook Joint Ownership Agreement, which requires NEP to offer its
13 ownership interest to the other Seabrook Joint Owners on equal or better terms than those
14 offered to FPLE Seabrook. See Section 23.1 of the Agreement for Joint Ownership,
15 Construction and Operation of New Hampshire Nuclear Units dated May 1, 1973, as
16 amended ("JOA"). Section 23.1 of the JOA provides an exemption from these provisions
17 for sales of ownership interests "in connection with a merger, consolidation or
18 acquisition of substantially all of the properties or all the generating facilities of a
19 Participant." NEP cannot take advantage of such an exemption because it continues to
20 have a minority ownership interest in a fossil generating station in Maine.
21 All of the selling owners have notified NEP that they have declined the offer to purchase
22 NEP's ownership interest. On April 18, 2002, NEP offered the non-selling owners --

1 MMWEC, the Hudson Light and Power Department, and the Taunton Municipal
2 Lighting Plant -- the opportunity to purchase its ownership interest on the same terms as
3 the proposed sale to FPLE Seabrook. Under the terms of the JOA, the non-selling
4 owners must notify NEP by June 18, 2002 if they intend to exercise their right;
5 otherwise, they are deemed to have waived it. To date, none of these non-selling owners
6 has notified NEP of a decision to accept or decline the offer to purchase.

7 **IV. BENEFITS TO CUSTOMERS**

8 **Q. Will this divestiture benefit Mass. Electric and Nantucket Electric customers?**

9 A. Yes, in a number of ways. First, 98% of the net proceeds, as defined in NEP's Post-
10 Divestiture formula for calculating Contract Termination Charges ("CTC"), received
11 from the sale of Seabrook will be used to reduce bills for the customers of NEP's
12 affiliates in New Hampshire, Massachusetts and Rhode Island as part of the annual
13 reconciliation of stranded cost charges under NEP's Contract Termination Charge
14 ("CTC"). As shown in Exhibit TLS- 1, NEP will receive estimated total proceeds of
15 \$93.5 million at closing. This amount, less any PSA-related and CTC-related
16 adjustments such as NEP's post-1995 capital expenditures, nuclear fuel inventories,
17 material and supplies and transaction costs associated with the sale, will be included as a
18 credit to NEP's stranded cost charges in the CTC. In an effort to return this credit to
19 customers as soon as possible, NEP will propose to reflect the credit in customer bills as
20 of January 1, 2003. The sale also will benefit customers by furthering the
21 Commonwealth's goal of moving generation to the competitive sector. Another benefit
22 is the elimination of the risk of future costs and liabilities related to the operation of the

1 units or decommissioning at the units (other than the limited contributions to
2 decommissioning funds discussed above) to which customers conceivably would
3 otherwise be exposed.

4 **Q. When will NEP reflect the proceeds of the Seabrook Sale in its CTC?**

5 A. In accordance with the Restructuring Settlement and the Wholesale Settlement, NEP's
6 CTC is annually reconciled to reflect the actual costs and/or proceeds recovered by NEP
7 as the result of any additional divestiture or the reconciliation of variable costs. If the
8 sale closing takes place in time, NEP will include actual amounts in its December 1, 2002
9 CTC Reconciliation Report. Otherwise, NEP will propose to include estimated amounts
10 in its 2002 Reconciliation Report and true-up to actual amounts in its 2003 Report.

11 **Q. Please describe the impact of the proceeds on customer bills.**

12 A. I estimate that customer bills in 2003 will be reduced by a total of approximately \$1.25
13 per month or 2.26 % for a typical 500 kWh residential customer. Of course the actual bill
14 impact will depend on a number of factors, including, for example, sale related
15 adjustments, actual transaction costs and the timing of the closing.

16 **Q. What is your conclusion regarding the disposal of NEP's interest in Seabrook?**

17 A. The Department should approve the divestiture of NEP's interest in Seabrook because:
18 (1) it carries out the terms of the Restructuring Settlement, approved by the Department;
19 (2) it is consistent with NEP's commitment to divest its minority interests in nuclear
20 generation; (3) the sale maximizes value of the existing generation facilities being sold;
21 and (4) it will reduce stranded cost charges to customers.

1 **V. EXEMPT WHOLESALE GENERATOR STATUS**

2 **Q. Please explain the findings that have been requested of the Department under**
3 **Section 32 of Public Utility Holding Company Act (“PUHCA”).**

4 A. NEP has requested the Department make certain findings that are required by §32 of
5 PUHCA in order for FPLE Seabrook to be able to obtain EWG status. FPLE Seabrook
6 will be seeking to have FERC determine that the Seabrook facilities assets are “eligible
7 facilities” pursuant to § 32 of PUHCA. NEP thus is seeking specific findings from the
8 Department that allowing the Seabrook facilities assets to become “eligible facilities”
9 pursuant to §32 of the 1935 Act: (1) will benefit consumers; (2) is in the public interest;
10 and (3) does not violate state law. As further described below, the sale is contingent
11 upon obtaining EWG status.

12 EWG status is necessary in order to avoid compliance with the burdensome
13 requirements applicable to public utility company affiliates of holding companies under
14 PUHCA. EWG status is critical to FPLE Seabrook because it allows ownership and
15 operation of Seabrook Station without regulation as a public utility company under the
16 1935 Act. The EWG exemption to PUHCA was specifically created in 1992 to avoid
17 subjecting competitive generation to the restrictions of the 1935 Act and to enhance the
18 creation of a competitive generation market. Few, if any, entities would have been
19 willing to bid for Seabrook if EWG status had not been made a condition of the sale.
20 Without the EWG condition, the Seabrook assets would be virtually unmarketable, and,
21 in any event, the purchase price realized by NEP and the other participating joint owners
22 would likely have been greatly reduced. EWG status is a closing condition and, as such,

1 is crucial to obtaining the previously described benefits to consumers. Canal Electric
2 Company, the other Massachusetts jurisdictional selling entity, and The Connecticut
3 Light and Power Company, a selling entity which is a subsidiary of Northeast Utilities, a
4 registered holding company, are also filing requests for these findings regarding
5 Seabrook from the Department on this date.

6
7 **VI. REQUEST FOR APPROVAL**

8 **Q. When do NEP and the other parties to the PSA wish to close the sale of Seabrook?**

9 A. The parties wish to close this transaction in late November 2002. In order to remain on
10 this time schedule, NEP requests approval by August 30, 2002. The Department's
11 approval, and that of the other state commissions considering this transaction must be
12 issued before FPLE Seabrook can file its FERC application for EWG status. The FERC
13 process is likely to take up to 60 days. With the state orders in hand, FPLE Seabrook can
14 file its FERC application for EWG status in early September 2002. It should also be
15 noted that on this date, two other joint owners, Canal Electric Company and The
16 Connecticut Light and Power Company, are filing petitions with the Department. NEP is
17 requesting that the Department act on and approve its divestiture contemporaneously
18 with the two other petitions filed on this date relating to the Seabrook sale: (1) Petition
19 for Approvals Relating to Asset Divestiture filed by Canal Electric Company, Cambridge
20 Electric Light Company, and Commonwealth Electric Company (*see* D.T.E. 02-34), and
21 (2) The Connecticut Light and Power Company's Petition for Findings Under Section
22 32(c) of the Public Utility Holding Company Act of 1935 (*see* D.T.E. 02-35).

1 **Q. Does this conclude your testimony?**

2 A. Yes, it does.